

Effective 5/13/2014

Superseded 5/12/2015

78A-6-306 Shelter hearing.

- (1) A shelter hearing shall be held within 72 hours excluding weekends and holidays after any one or all of the following occur:
 - (a) removal of the child from the child's home by the division;
 - (b) placement of the child in the protective custody of the division;
 - (c) emergency placement under Subsection 62A-4a-202.1(4);
 - (d) as an alternative to removal of the child, a parent enters a domestic violence shelter at the request of the division; or
 - (e) a "Motion for Expedited Placement in Temporary Custody" is filed under Subsection 78A-6-106(4).
- (2) Upon the occurrence of any of the circumstances described in Subsections (1)(a) through (e), the division shall issue a notice that contains all of the following:
 - (a) the name and address of the person to whom the notice is directed;
 - (b) the date, time, and place of the shelter hearing;
 - (c) the name of the child on whose behalf a petition is being brought;
 - (d) a concise statement regarding:
 - (i) the reasons for removal or other action of the division under Subsection (1); and
 - (ii) the allegations and code sections under which the proceeding has been instituted;
 - (e) a statement that the parent or guardian to whom notice is given, and the child, are entitled to have an attorney present at the shelter hearing, and that if the parent or guardian is indigent and cannot afford an attorney, and desires to be represented by an attorney, one will be provided in accordance with the provisions of Section 78A-6-1111; and
 - (f) a statement that the parent or guardian is liable for the cost of support of the child in the protective custody, temporary custody, and custody of the division, and the cost for legal counsel appointed for the parent or guardian under Subsection (2)(e), according to the financial ability of the parent or guardian.
- (3) The notice described in Subsection (2) shall be personally served as soon as possible, but no later than one business day after removal of the child from the child's home, or the filing of a "Motion for Expedited Placement in Temporary Custody" under Subsection 78A-6-106(4), on:
 - (a) the appropriate guardian ad litem; and
 - (b) both parents and any guardian of the child, unless the parents or guardians cannot be located.
- (4) The following persons shall be present at the shelter hearing:
 - (a) the child, unless it would be detrimental for the child;
 - (b) the child's parents or guardian, unless the parents or guardian cannot be located, or fail to appear in response to the notice;
 - (c) counsel for the parents, if one is requested;
 - (d) the child's guardian ad litem;
 - (e) the caseworker from the division who is assigned to the case; and
 - (f) the attorney from the attorney general's office who is representing the division.
- (5)
 - (a) At the shelter hearing, the court shall:
 - (i) provide an opportunity to provide relevant testimony to:
 - (A) the child's parent or guardian, if present; and
 - (B) any other person having relevant knowledge; and
 - (ii) subject to Section 78A-6-305, provide an opportunity for the child to testify.

- (b) The court:
 - (i) may consider all relevant evidence, in accordance with the Utah Rules of Juvenile Procedure;
 - (ii) shall hear relevant evidence presented by the child, the child's parent or guardian, the requesting party, or their counsel; and
 - (iii) may in its discretion limit testimony and evidence to only that which goes to the issues of removal and the child's need for continued protection.
- (6) If the child is in the protective custody of the division, the division shall report to the court:
 - (a) the reason why the child was removed from the parent's or guardian's custody;
 - (b) any services provided to the child and the child's family in an effort to prevent removal;
 - (c) the need, if any, for continued shelter;
 - (d) the available services that could facilitate the return of the child to the custody of the child's parent or guardian; and
 - (e) subject to Subsections 78A-6-307(18)(c) through (e), whether any relatives of the child or friends of the child's parents may be able and willing to accept temporary placement of the child.
- (7) The court shall consider all relevant evidence provided by persons or entities authorized to present relevant evidence pursuant to this section.
- (8)
 - (a) If necessary to protect the child, preserve the rights of a party, or for other good cause shown, the court may grant no more than one continuance, not to exceed five judicial days.
 - (b) A court shall honor, as nearly as practicable, the request by a parent or guardian for a continuance under Subsection (8)(a).
- (9)
 - (a) If the child is in the protective custody of the division, the court shall order that the child be released from the protective custody of the division unless it finds, by a preponderance of the evidence, that any one of the following exist:
 - (i) subject to Subsection (9)(b)(i), there is a substantial danger to the physical health or safety of the child and the child's physical health or safety may not be protected without removing the child from the custody of the child's parent;
 - (ii)
 - (A) the child is suffering emotional damage; and
 - (B) there are no reasonable means available by which the child's emotional health may be protected without removing the child from the custody of the child's parent;
 - (iii) there is a substantial risk that the child will suffer abuse or neglect if the child is not removed from the custody of the child's parents;
 - (iv) subject to Subsection (9)(b)(ii), the child or a minor residing in the same household has been, or is considered to be at substantial risk of being, physically abused, sexually abused, or sexually exploited by a:
 - (A) parent;
 - (B) member of the parent's household; or
 - (C) person known to the parent;
 - (v) the parent is unwilling to have physical custody of the child;
 - (vi) the child is without any provision for the child's support;
 - (vii) a parent who is incarcerated or institutionalized has not or cannot arrange for safe and appropriate care for the child;
 - (viii)

- (A) a relative or other adult custodian with whom the child is left by the parent is unwilling or unable to provide care or support for the child;
- (B) the whereabouts of the parent are unknown; and
- (C) reasonable efforts to locate the parent are unsuccessful;
- (ix) the child is in urgent need of medical care;
- (x) the physical environment or the fact that the child is left unattended beyond a reasonable period of time poses a threat to the child's health or safety;
- (xi) the child or a minor residing in the same household has been neglected;
- (xii) the parent, or an adult residing in the same household as the parent, is charged or arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab Act, and any clandestine laboratory operation was located in the residence or on the property where the child resided;
- (xiii) the child's welfare is substantially endangered; or
- (xiv) the child's natural parent:
 - (A) intentionally, knowingly, or recklessly causes the death of another parent of the child;
 - (B) is identified by a law enforcement agency as the primary suspect in an investigation for intentionally, knowingly, or recklessly causing the death of another parent of the child; or
 - (C) is being prosecuted for or has been convicted of intentionally, knowingly, or recklessly causing the death of another parent of the child.
- (b)
 - (i) Prima facie evidence of the finding described in Subsection (9)(a)(i) is established if:
 - (A) a court previously adjudicated that the child suffered abuse, neglect, or dependency involving the parent; and
 - (B) a subsequent incident of abuse, neglect, or dependency involving the parent occurs.
 - (ii) For purposes of Subsection (9)(a)(iv), if the court finds that the parent knowingly allowed the child to be in the physical care of a person after the parent received actual notice that the person physically abused, sexually abused, or sexually exploited the child, that fact constitutes prima facie evidence that there is a substantial risk that the child will be physically abused, sexually abused, or sexually exploited.
- (10)
 - (a)
 - (i) The court shall also make a determination on the record as to whether reasonable efforts were made to prevent or eliminate the need for removal of the child from the child's home and whether there are available services that would prevent the need for continued removal.
 - (ii) If the court finds that the child can be safely returned to the custody of the child's parent or guardian through the provision of those services, the court shall place the child with the child's parent or guardian and order that those services be provided by the division.
 - (b) In making the determination described in Subsection (10)(a), and in ordering and providing services, the child's health, safety, and welfare shall be the paramount concern, in accordance with federal law.
- (11) Where the division's first contact with the family occurred during an emergency situation in which the child could not safely remain at home, the court shall make a finding that any lack of preplacement preventive efforts was appropriate.
- (12) In cases where actual sexual abuse, sexual exploitation, abandonment, severe abuse, or severe neglect are involved, neither the division nor the court has any duty to make "reasonable efforts" or to, in any other way, attempt to maintain a child in the child's home, return a child to the child's home, provide reunification services, or attempt to rehabilitate the offending parent or parents.

- (13) The court may not order continued removal of a child solely on the basis of educational neglect as described in Subsection 78A-6-105(25)(b) truancy, or failure to comply with a court order to attend school.
- (14)
- (a) Whenever a court orders continued removal of a child under this section, the court shall state the facts on which that decision is based.
 - (b) If no continued removal is ordered and the child is returned home, the court shall state the facts on which that decision is based.
- (15) If the court finds that continued removal and temporary custody are necessary for the protection of a child because harm may result to the child if the child were returned home, the court shall order continued removal regardless of:
- (a) any error in the initial removal of the child;
 - (b) the failure of a party to comply with notice provisions; or
 - (c) any other procedural requirement of this chapter or Title 62A, Chapter 4a, Child and Family Services.